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To
Office of the United States Political
Adviser for Japan,
Tokyo.

MEMORANDUM OF CONVERSATION

Subject: Informal Discussions on the United States Standard Draft Treaty of Friendship, Commerce and Navigation

Participants: For the Ministry of Foreign Affairs:

Mr. Morio YUKAWA, Director of Economic Affairs Bureau
Mr. Kenichi OTABE, Vice Director, Economic Affairs Bureau
Mr. Haruki MORI, Chief, First Section, Economic Affairs Bureau
Mr. Takeshi KANEMATSU, Secretary, First Section, Economic Affairs Bureau
Mr. Mikizo NAGAI, Chief, Sixth Section, Economic Affairs Bureau

For the Office of the United States Political Adviser, Japan:

Mr. Jules BASSIN, Legal Attache
Mr. Dudley G. SINGER, Commercial Attache
Mr. Robert W. ADAMS, Second Secretary

Place: Office of the Ministry of Foreign Affairs, Tokyo, Japan.

Date: Thursday, April 17, 1952. SEVENTEENTH INFORMAL MEETING.

PROTOCOL

Mr. Yukawa asked for a clarification of the status of Puerto Rico, and requested information as to why it was necessary to stipulate (paragraph 5 of the Protocol) that the provisions of Article XXI, paragraph 2, would apply to Puerto Rico regardless of any change in its political status.

Mr. Adams replied that Puerto Rico was a dependency of the United States, administered under the Organic Act of Puerto Rico (1917), as amended, which extends American citizenship to Puerto Ricans. Although not an organized territory such as Alaska and Hawaii, Puerto Rico is administered by a Governor of its own election. It has a legislative branch (both a Senate and a House of Representatives) elected by direct

vote, and sends a Resident Commissioner to Washington (where he has a voice but no vote in the United States House of Representatives). The reason for its specific mention in the Protocol, Mr. Adams added, was that the establishment of an independent Republic of Puerto Rico at some future date was possible. If this change took place, Puerto Rico would occupy a position similar to that of the Republic of the Philippines, with respect to which a specific reservation is made in paragraph 2, Article XXI. It was to be assumed that the standard draft provision would be modified to make mention of such a Republic of Puerto Rico (this dependency already being included in paragraph 2, Article XXI, as a possession of the United States) if, or when, its political status was so changed.

Mr. Yukawa then referred to paragraph 3-bis of the Protocol, newly proposed by the Department of State. In the first sentence of this paragraph, he said, the standard draft stated that either Party could prohibit the importation, seize, restrict or regulate the sale "of any goods which are not marked in such a manner as to indicate the name of the country of origin of such goods". It was believed that this clause was far too wide in scope, since there were many commodities which could not be so marked (except in their original shipping container).

Mr. Nagai added that this entire paragraph appeared to be designed with the prevention of unfair trade practices in mind. The non-marking of goods, as such, could not be considered an unfair or deceptive practice. Furthermore, he added, Japanese law does not require the marking of all goods, nor did he believe that the United States would prohibit the import of unmarked goods unless they were deliberately left unmarked in order to deceive the buyer or the public. He stated that he believed therefore that the present clause was stated in too positive a way, going beyond what might be considered a defense against unfair/practices.
trade

Mr. Yukawa suggested that consideration be given the deletion of the phrase under discussion, thus making the first sentence read, in part, "or otherwise restrict or regulate the sale of any goods which are so labeled, marked, or otherwise identified as to create misrepresentation...".

Mr. Singer replied that the Japanese proposal would limit this paragraph to a single reservation (i.e., with respect to the positive or deliberate act of falsely marking goods), whereas the Department of State proposal included two points. In addition to that accepted by the Japanese side, the standard draft made a reservation with respect to the requirement that goods be so marked as clearly to indicate their origin. He added that the phraseology employed in this paragraph (and the use of the word "may") clearly indicated that the marking of goods would not be a requirement in all cases. If the present phrase was considered too sweeping in character - as the Japanese side believed - it was suggested that the Japanese representatives consider leaving the phrase untouched and adding to it some qualifying clause.

Mr. Yukawa stated that Japan had no laws or regulations requiring the marking of imported items, and that it was believed this clause should be limited to cover only the unfair or deceptive trade practices, which were adequately regulated in the United States and Japan. He asked for an example of the action which might be taken by a United States customs official with reference to unmarked imported goods.

Mr. Adams replied that it was difficult to give a general illustration, since it was agreed that there were many commodities (ranging from raw materials to such finished goods as fine crystal table-ware) which could be identified only by label, or on the shipping container, or by documentation of origin. As a possible example, he cited souvenir items involving American motifs (such as replicas of the Washington Monument, plaster figurines of American historical figures, et cetera) as among those which would unquestionably be forbidden entry by a United States Customs official unless these were clearly marked to indicate their foreign manufacture.

Mr. Yukawa stated that such cases were readily understood, but that it was believed that these might fall within the category of cases involving deceptive trade practices, since the public would believe these items to be of American manufacture. With the basic objective of preventing deceptive trade practices in mind, Mr. Yukawa proposed that the phrase in question be deleted, and that the phrase "of any goods which are left unmarked in an attempt to conceal the name of the country of origin of these goods" be used in its place. The first sentence of paragraph 3-bis would therefore read:

> "With reference to Article XIV, paragraph 4, it is understood that either Party, acting in accordance with its laws, may prohibit the importation into its territory, or seize, or otherwise restrict or regulate the sale of any goods which are left unmarked in an attempt to conceal the name of the country of origin of these goods, or which are so labeled, marked, or otherwise identified as to create misrepresentation or false impression as to their true geographic or commercial origin."

Mr. Adams replied that the Japanese proposal would be made of record provisionally for the purpose of these informal discussions, and that this point would be referred to the Department of State for its consideration.

Mr. Nagai then referred to the phrase "to prevent misrepresentations, direct or by implication" in the second sentence of paragraph 3-bis, and stated that it was believed by some agencies that it would be best to use the phrase "to prevent such misrepresentations that would cause misunderstanding...". He asked whether such a substitution would be acceptable.

Mr. Bassin replied that the second phrase was somewhat obscure, since misunderstanding on the part of the public was a factor over which little control could be exercised. He added that misunderstanding was possible even when there was no intention of misrepresenting a product, and that he believed the standard draft phrase was the more precise of the two.

Mr. Otabe replied that this explanation was acceptable to the Japanese side, but questioned that part of the phrase which reads "direct or by implication". He added that the Madrid Agreement (for the Prevention of False Indications of Origin on Goods) of 1934 - to which Japan has declared its intention to adhere in the near future - used the phrase "direct or indirect" in this connection. He stated that the latter was preferred by the Japanese side, and proposed that this phrase in paragraph 3-bis be so amended.

Mr. Bassin replied that he believed both terms to have the same meaning, but that the change proposed by the Japanese side would be made in the working draft of these informal discussions, and that this proposal would be referred to the Department of State for its consideration.

Mr. Otabe referred again to the Madrid Agreement and stated that there were certain clauses in the Agreement which might possibly be added to paragraph 3-bis. He suggested therefore that consideration be given the addition of the following clause, to be part of the first sentence, immediately following the words "geographic or commercial origin":

> "to the detriment of the distinctive regional or geographic names of goods of the territory of such Party as are protected by its legislation and communicated to the other Party, or are not regional appellations of generic character of such goods, or to the detriment of the nationals or companies of such Party which produce or make the similar kinds of goods."

Mr. Adams replied that the suggestion of Mr. Otabe would make paragraph 3-bis far wider in scope than was intended in the standard draft's phraseology, and raised certain questions concerning the use of the so-called "generic appellations" with respect to which the United States policy was firm and specific. He added that it was believed that numerous words, originally denoting regional origin, are considered to have come into common use in world markets. As examples such long-used words as "tweed", "shantung" silk, "worsted" wool, "oxford" fabrics, and others could be cited. By the same token, it was permissible in the United States to produce "port", "sherry", "champagne" and other wines and liquors, despite the traditional objection voiced by countries in whose districts such wines were originally produced. Mr. Singer added that, in order to prevent misrepresentation to the public, such

wines and liquors of these names produced in the United States were clearly labeled to show their American origin. In view of these circumstances, and the fact that the Japanese suggestion appeared to go far beyond the intent of paragraph 3-bis, Mr. Adams asked that the Japanese side reconsider its position on this point.

Mr. Otabe replied that it was now understood that the Japanese proposal would have made this paragraph wider in scope rather than make it of more specific and limited application, which had been one of the considerations on the Japanese side. He then asked for a clarification of the term "true geographic or commercial origin" as used in the first sentence, paragraph 3-bis, because it was understood to be closely related to the final clause of the Japanese proposal for addition, reading "or to the detriment...similar kinds of goods".

Mr. Bassin replied that this was meant to cover goods not only the native product of a country, but also those which were imported from other sources and then modified, transformed, improved or purified to such an extent that they were no longer considered the product of the original country but rather of the country where this handling or processing took place. The latter, as well as manufacture or processing to varying degrees, came within the definition of "commercial origin".

Mr. Yukawa then stated that the words "or are the products of a national or company of such other Party", with which the second sentence of paragraph 3-bis now concluded, were not clearly understood. He pointed out that it appeared that the earlier phrase in this sentence (which covered territories and distinctive places) adequately protected the trade interests of either Party, and that the phrase in question appeared to refer to specific firms and individuals whose rights to industrial property, and trade marks and names, were already assured under Article X. Mr. Nagai added that this phrase appeared to give foreign trade names greater protection than was extended under Article X. He stated that an American trade name or mark, for example, could be given legal protection in Japan only if it were properly registered under Japanese law, as provided for in Article X, and that the latter part of paragraph 3-bis might be construed as extending such protection even if the mark were not registered in Japan.

Mr. Adams replied that it was not believed that this clause was intended to assure any rights to protection of trade marks or names not already covered in Article X. He cited as a possible example of action coming within this clause, the case of an American manufacturer who (without claiming that his product originated in Japan) might distribute his product under a name implying its manufacture by Japanese interests in the United States or in a third country. If this product were similar to items exported from Japan, and if the quality of the former were such as to affect adversly the marketability, prestige or reputation of the Japanese export product, it was believed that the Japanese Government (or an industry-wide association) would be justified in requesting action to prohibit such misrepresentation.

Mr. Yukawa stated that the Japanese side would be willing to consider the retention of the phrase "or are the product of a national or company of such other Party" - provided this phrase clearly did not extend legal protection to marks, names and other rights not duly registered in Japan. He added that it was considered preferable, however, that this clause be withdrawan from the Department of State's proposal since he believed that the remainder of the sentence gave all the assurances which were necessary or appropriate. He proposed therefore that the phrase "or are the product of a national or company of such other Party" be deleted from the second sentence. He further proposed that a clause stating "acting in accordance with its laws" be added to this sentence because he believed that Japan need not take special measures or adopt new legislation, other than the current Law concerning Prevention of Unfair Competition.

Mr. Adams replied that this proposal would be referred to the Department of State, and added that the Department would also be requested for clarification of the phrase in question in order to determine whether the additional Japanese suggestion (i.e., a third sentence containing the various thoughts expressed by Mr. Yukawa) could appropriately be formulated. In order to clarify the record Mr. Adams stated that the amended paragraph 3-bis of the Protocol, as proposed by the Japanese side, read as follows:

> "With reference to Article XIV, paragraph 4, it is understood that either Party, acting in accordance with its laws, may prohibit the importation into its territory, or seize, or otherwise restrict or regulate the sale of any goods which are left unmarked in an attempt to conceal the name of the country of origin of these goods, or which are so labeled, marked, or otherwise identified as to create misrepresentation or false impression as to their true geographic or commercial origin. Furthermore, each Party agrees to take appropriate steps to prevent misrepresentations, direct or indirect, that goods produced or sold in or exported from its territory originate within the territory of the other Party or any distinctive place within such territory."

Mr. Yukawa replied that this was a correct version of the Japanese proposal. It was agreed that the next meeting would take place on Tuesday, April 22, 1952.

/s/ M. Yukawa

Morio Yukawa
Director
Economic Affairs Bureau
Ministry of Foreign Affairs

/s/ Frank A. Waring

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